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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,225	06/20/2003	Robert F. Burkholder	JK01507	9167
28368 7590 05/20/2008 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				
EXAMINER FRANTZ, JESSICA L				
ART UNIT 3746		PAPER NUMBER		
MAIL DATE 05/20/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/601,225

**Applicant(s)**

BURKHOLDER ET AL.

**Examiner**

JESSICA L. FRANTZ

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/24/2008 has been entered. Currently, claims 1-38 and 40-43 are pending. This action is NON-FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 13 and 41-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Vaage US PG PUB 2002/0175222. Vaage teaches the invention as claimed including: An air compressor assembly shown in figure 1 for providing compressed air to a load, the air compressor assembly comprising: an air tank 2 for containing air at an elevated pressure, the air tank having an air inlet port 20 and an air outlet port 8; an air compressor 4 for supplying air for storage in the air tank through a first tubing 6, the first tubing connecting the air inlet port to the air compressor (figure 1);

and a second tubing 10 connecting the air outlet port to a manifold assembly (joint right before tool begins), the manifold assembly connectable to the load 12 needing compressed air wherein the air outlet port is positioned proximate to the bottom of the air tank (figure 1) to enable any condensate that accumulates at the bottom of the air tank to be entrained with the compressed air in the air tank that is discharged through the air outlet port. It is inherent that at some temperature and/or pressure, the compressed air in the tank will condense and be pushed out along with texture material through the outlet 8. Furthermore, the air compressor assembly is of a portable type (figure 1, paragraph [0025]).

4. In regards to claims 41-43, Vaage teaches the method as claimed by supplying an air tank 2 for storing air at an elevated pressure, supplying one of an air outlet port, and air access port 8, and an open end of a hollow conduit positioned proximate to the bottom of the air tank; and discharging condensate within the air tank into compressed air being released from the air tank during usage, said discharging via the one of the air outlet port, the air access port, and the open end of a hollow conduit position at the bottom portion of the air tank from further comprising routing discharged condensate and compressed air through the air outlet tubing to an air powered tool wherein the discharging step is performed so that the condensate is discharged in small amount not harmful to the air powered tool (paragraphs [0018-0025]).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal 5,399,072 in view of Vaage US PG PUB 2002/0175222. Westphal teaches the invention as claimed including: an air compressor assembly, comprising: an air tank 14 for containing air at an elevated pressure. The air tank has an air access port (connected to the pressure gauge 24), an air compressor 32 for supplying air for storage in the air tank, a first tubing 36 connecting the air compressor to a manifold assembly 28, and a second tubing (clearly seen in figure 4 connecting 28 to the tank) connecting the manifold assembly to the air access port. The compressed air in the air tank is discharged through the air access port, the second tubing, and the manifold assembly during air usage (col. 4 lines 46-64). The air compressor assembly is of a portable type.
7. Vaage teaches the air access port 8 is positioned proximate to the bottom of the air tank 2 (figure 1) to enable any condensate that accumulates at the bottom of the air tank to be entrained with the compressed air and discharged through the second tubing. Such an arrangement allows fluid under gravity to migrate downward and ease discharge and avoid accumulation. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included positioned the access port of Westphal proximate the bottom of the tank as taught by Vaage which allows fluid under gravity to migrate downward and ease discharge and avoid accumulation.

8. Claims 3-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaage US PGPUB 2002/0175222 in view of Moore 4,514,019 and Grainger (Industrial and Commercial Equipment and Supplies, General Catalog No. 308, pgs. 1600-1603 (1991)). Vaage teaches the invention as claimed but fails to teach the portable air compressor assembly is enclosed in a shroud and shroud is made of plastic. The shroud includes a handle to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

9. Moore teaches a portable air compressor assembly is enclosed in a shroud 54, 56 & 60 and the shroud is made of plastic (col. 4line.40). The shroud includes a handle 68 to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve 167 for preventing air from flowing from the air tank to the air compressor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Vaage to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract). Grainger teaches the various types of compressor assemblies which are well known in the art

10. Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal 5,399,072 in view of Vaage US PGPUB 2002/0175222 in view of Moore

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4,514,019 and Grainger (Industrial and Commercial Equipment and Supplies, General Catalog No. 308, pgs. 1600-1603 (1991)) Westphal in view of Vaage teaches the invention as claimed but fail to teach the portable air compressor assembly is enclosed in a shroud and the shroud is made of plastic. The shroud includes a handle to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

11. Moore teaches a portable air compressor assembly is enclosed in a shroud 54, 56 & 60 and the shroud is made of plastic (col. 4 line 40). The shroud includes a handle 68 to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve 167 for preventing air from flowing from the air tank to the air compressor. The air access port located on the bottom of the tank, given the orientation of the apparatus is not fixed and given its portable nature, is usable under different orientations. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal in view of Vaage to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract). Grainger teaches the various types of compressor assemblies which are well known in the art.

12. Claims 28, 29 and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view of Strubel (4,828,131). Westphal teaches an air compressor assembly, comprising: an air tank (14) for containing air at an elevated pressure. The air tank having an air access port therein (connected to the pressure gauge 24). An air compressor (32) for supplying air for storage in the air tank. A first tubing (36) connecting the air compressor to a manifold assembly (28). A second tubing (clearly seen in figure 4 connecting 28 to the tank) connecting the manifold assembly to the air access port. The compressed air in the air tank is discharged through the air access port, the second tubing, and the manifold assembly (col. 4 lines 46-64). The air compressor assembly is of a portable type and the air access port is positioned at a top wall of the air tank (clearly seen in figure 1).

13. Westphal fails to teach the air access port being an open end of a centrally hollow conduit positioned inside the air tank. Strubel teaches an air access port (6) being an open end of a hollow conduit (5) positioned inside the air tank (1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the hollow conduit as taught by Strubel as a means of making possible the greatest emptying of fluid from the tank (col. 1, lines 45-52).

14. Claims 30-38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view of Strubel and in further view of Moore. Westphal in view of Strubel teach the limitations of claims 28, 29 and 39, but fail to teach the portable air compressor assembly is enclosed in a shroud, the shroud is made of plastic, wherein the shroud includes a handle to allow the portable air compressor assembly to be lifted



and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

15. Moore teaches a portable air compressor assembly is enclosed in a shroud (54, 56 & 60), the shroud is made of plastic (col. 4 line 40). The shroud includes a handle (68) to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve (167) for preventing air from flowing from the air tank to the air compressor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract).

#### ***Response to Arguments***

16. Applicant's arguments with respect to claims 1-27 and 41-43 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

17. Applicant's arguments filed 3/24/2008 with respect to claims 28-33 and 40 have been fully considered but they are not persuasive. Applicant argues that the applied Strubel reference doesn't motivate one to combine it with the Westphal reference because Strubel teaches a liquid tank. Examiner finds this unpersuasive because the tank taught by Strubel contains pressurized/compressed gas and therefore is easily

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capable of use in conjunction with an air compressor. Furthermore, Strubel teaches a fluid container as does Westphal. One looking to improve a fluid container may quite readily look to other fluid containers for suggestions. It is also unnecessary for the prior art to address the same problems identified by the Applicant as long as the structure taught by the prior art satisfies the limitations of the claims and there is motivation to combine the references. As cited above it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the hollow conduit as taught by Strubel as a means of making possible the greatest emptying of fluid from the tank (col. 1 lines 45- 52).

18. 18. A recitation with respect to the material intended to be worked upon by a claimed apparatus does not impose any structural limitations upon the claimed apparatus which differentiates it from the prior art apparatus satisfying the structural limitations of the claims, as is the case here. MPEP§§ 22.25.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA L. FRANTZ whose telephone number is (571)272-5822. The examiner can normally be reached on Monday through Friday 8:30a.m.-5:00p.m. E.S.T..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
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/Jessica L Frantz/  
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